

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:13cr418
	.	
vs.	.	Alexandria, Virginia
	.	October 30, 2013
YOUSEF MOHAMID AL-KHATTAB,	.	2:09 p.m.
	.	
Defendant.	.	
	.	
. . . . .	.	

TRANSCRIPT OF PRE-INDICTMENT PLEA  
BEFORE THE HONORABLE LIAM O'GRADY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	GORDON D. KROMBERG, AUSA ALLISON ICKOVIC, SAUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314
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FOR THE DEFENDANT:	ALAN H. YAMAMOTO, ESQ. Law Office of Alan Yamamoto 643 South Washington Street Alexandria, VA 22314
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ALSO PRESENT:	SA SCOTT MCGUCKIN
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OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 (Defendant present.)

3 THE CLERK: Criminal Case 1:13cr418, United States of  
4 America v. Yousef Mohamid Khattab. Will counsel please  
5 identify themselves for the record.

6 MR. KROMBERG: Good afternoon, Your Honor. Gordon  
7 Kromberg for the United States. With me at counsel table is  
8 Special Assistant United States Attorney Allison Ickovic and  
9 Special Agent Scott McGuckin from the United States Secret  
10 Service.

11 THE COURT: All right, good afternoon to each of you.

12 MS. ICKOVIC: Good afternoon.

13 MR. YAMAMOTO: Good afternoon, Your Honor. Alan  
14 Yamamoto for Mr. al-Khattab.

15 THE COURT: All right. Good morning, Mr. Yamamoto.  
16 Good afternoon, Mr. Khattab.

17 THE DEFENDANT: Good afternoon.

18 THE COURT: All right, this comes on for entry of a  
19 plea. Are the parties ready to proceed?

20 MR. YAMAMOTO: Yes, Your Honor.

21 MR. KROMBERG: Yes, Your Honor.

22 THE COURT: All right.

23 MR. KROMBERG: I would like to note, though, that the  
24 papers that have been handed up to you today are, differ in  
25 very slight respect from the ones that we dropped off with your

1 chambers earlier. On the statement of facts, portions of  
2 paragraphs 2 and 29 were deleted, and the signature blocks were  
3 reversed for the government attorneys. Also, in the plea  
4 agreement -- oh, I'm sorry. Thank you.

5 Also, in paragraph 14, a sentence was deleted from  
6 paragraph 14; and then on the plea agreement, what has been  
7 paragraphs 8 and 9 have been replaced by one paragraph, a new  
8 paragraph, paragraph 8 in the plea agreement. And other than  
9 that, they're the same, Judge.

10 THE COURT: What material change does -- in the plea  
11 agreement do the changes make? I mean, is it still a  
12 straight-up plea to the --

13 MR. KROMBERG: Yes. They have to do with the  
14 language -- the Department of Justice insisted on different  
15 language regarding the possibility or not possibility of being  
16 prosecuted in another district, but there's no other change to  
17 the plea agreement.

18 THE COURT: All right, let me --

19 MR. YAMAMOTO: I apologize, Your Honor.

20 THE COURT: That's all right; take your time. It  
21 still says that Mr. Khattab cannot be further prosecuted in  
22 the -- by the federal government for specific conduct, right?

23 MR. KROMBERG: Well, what it says is that the U.S.  
24 Attorney's Office and the National Security Division of the  
25 United States Department of Justice will not further criminally

1 prosecute the defendant for the specific conduct described in  
2 the information or statement of facts.

3 That is not limited to this district, but it is  
4 limited to the United States Attorney's Office and the National  
5 Security Division of the United States Department of Justice,  
6 which has, "jurisdiction" may be the wrong word, but  
7 authorization authority for cases like this.

8 THE COURT: Well, let's, let's be real sure we all  
9 understand each other before Mr. Khattab is asked to plead  
10 guilty to something. I read that as saying the federal  
11 government cannot further prosecute Mr. Khattab for this crime  
12 as listed in the statement of facts. Do you disagree with  
13 that?

14 MR. KROMBERG: I think that the -- if the Civil  
15 Rights Division of the Department of Justice were, wanted to  
16 prosecute Mr. Khattab for the very same facts with a different  
17 charge, this plea agreement would not bar that. I think and  
18 I've told Mr. Yamamoto and Mr. al-Khattab that I think it's  
19 extremely unlikely and I would kick and scream to do my best to  
20 prevent that from happening, but this is the language that we  
21 were required to insert last night.

22 THE COURT: And is there any possible state action on  
23 this -- I have never seen a state statute which covered this  
24 type of crime, but --

25 MR. KROMBERG: I think it's possible that some state

1 might cover it, but we, we never -- the plea agreement never  
2 purported to cover anything involving state action.

3 THE COURT: State action, yeah.

4 Mr. Yamamoto, what comment, if any, do you want to  
5 make to that?

6 MR. YAMAMOTO: Well, we had a discussion with the  
7 government about this prior to the Court coming out. We aren't  
8 particularly happy about it. Particularly in the *Morton* case,  
9 the United States said it wouldn't further prosecute, so  
10 there's a distinction there that would concern me. We told the  
11 government that we might raise an *Alford* plea, which the  
12 government said they would not be willing to go forward with,  
13 so we're stuck sort of between a rock and a hard place.

14 They've given us some assurances, at least as far as  
15 the U.S. Attorney's Office here goes, about prosecutions; but  
16 that certainly does not cover the Justice Department as a  
17 whole, and certainly if the Justice Department decided it  
18 wanted to go forward with prosecution of Mr. al-Khattab, it  
19 could do so notwithstanding whatever objections the U.S.  
20 Attorney's Office in the Eastern District might have, but we're  
21 willing to go forward with this and keep our fingers crossed.  
22 I don't know what else we can do. We face immense jail time if  
23 he were to be indicted and we go forward and he's convicted.

24 THE COURT: All right, then let's have Mr. Khattab  
25 come and be sworn.

1                   YOUSSEF MOHAMID AL-KHATTAB, DEFENDANT, AFFIRMED

2                   THE COURT: All right, let's start with our last --  
3 our conversation about the, the protection that you're being  
4 given by this U.S. Attorney's Office and the Department of  
5 Justice National Security Division. You've listened to the  
6 conversation we just had, and you've had an opportunity to  
7 speak to Mr. Yamamoto about that?

8                   THE DEFENDANT: Your Honor, briefly, I did. I'm not  
9 familiar with the whole legal system and how the wording goes.  
10 I really -- I understand, but as my attorney said, I just don't  
11 see any other way that's going to be beneficial -- and I hate  
12 to say it -- for me. So --

13                  THE COURT: Do you need more time to speak with  
14 Mr. Yamamoto? Because I'll give you --

15                  THE DEFENDANT: No, no.

16                  THE COURT: We'll take a recess.

17                  THE DEFENDANT: No, Your Honor. It's not a matter  
18 that I -- but I like to think there's some honest people in the  
19 government, and I believe there is still some, and I just hope  
20 that those are going to be the ones in charge of this in that  
21 level, whatever.

22                  THE COURT: All right, thank you.

23                  THE DEFENDANT: You're welcome.

24                  THE COURT: All right, how old are you, sir?

25                  THE DEFENDANT: I'm 45 years old.

1 THE COURT: And how far did you go in school?

2 THE DEFENDANT: I finished eighth grade, and I went  
3 back to college in 2010 and graduated from Culinary Arts in  
4 Atlantic Cape Community College.

5 THE COURT: Atlantic City Community College?

6 THE DEFENDANT: Atlantic Cape Community College.  
7 It's in Atlantic County. It's called the Academy of Culinary  
8 Arts.

9 THE COURT: All right. You were born and raised in  
10 the United States?

11 THE DEFENDANT: Yes, I was, Your Honor.

12 THE COURT: All right. And English is your natural  
13 language?

14 THE DEFENDANT: That is correct.

15 THE COURT: You can speak and write --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- and read the English language  
18 fluently?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Have you told Mr. Yamamoto  
21 everything about this case so that he could represent you to  
22 the best of his ability?

23 THE DEFENDANT: I really -- I'm sorry if I have to be  
24 vocal, and I might be shooting myself in the foot, but there's  
25 not much I could really discuss via phone even though I do

1 discuss with my, my lawyer. The fact is that everything that  
2 I've done has and is been monitored, so to the best of my  
3 ability, I'm trying to, but the more I speak on the phone, the  
4 more I'm shooting myself in the foot, so this is the best I  
5 think I'm going to be able to get out of this.

6 THE COURT: Well, you've gone over the statement of  
7 facts with him carefully and discussed the government's ability  
8 to prove these events occurred and the significance of them to  
9 Mr. Yamamoto?

10 THE DEFENDANT: I think the initial statement of  
11 facts, Your Honor, I don't know if you saw that, I thought it  
12 was -- okay. I'm sorry. I did not agree with it, and I  
13 thought it was a lot of commentary. The government cleaned it  
14 up; and I could, you know, that's why I'm signing a plea right  
15 now. What I see that's on there right now, I could see their  
16 point; that is, I've violated the law.

17 THE COURT: All right. And you've gone over the  
18 elements of the charge that is identified in the criminal  
19 information in that you -- which charges you with using the  
20 Internet to place another in fear of death or serious injury,  
21 the elements of that charge, with Mr. Yamamoto?

22 THE DEFENDANT: By the elements, you mean reading  
23 over the paragraph?

24 THE COURT: Intent.

25 THE DEFENDANT: Well, I'm guilty of putting those



1 things up, and I'm saying that, I'm saying -- please forgive  
2 me. I'm just trying to --

3 THE COURT: Yeah.

4 THE DEFENDANT: I put all those things up. I didn't  
5 agree with their intention that they said that I put those  
6 things up, but the fact is I did put those things up, and  
7 that's what I'm pleading guilty to.

8 THE COURT: All right. I think the words, words  
9 speak for themselves, correct, and -- but you have -- in order  
10 for -- I'm going to ask you in a few minutes whether you are  
11 pleading guilty because you are guilty of the charges and if  
12 one of the elements of the offense is whether you intended to  
13 put other persons in fear of injury or death, and if you do not  
14 believe that these -- if you don't believe that the words that  
15 you spoke through the Internet were intended to put persons in  
16 fear of bodily harm or death, then, you know, that's one of the  
17 elements of the offense.

18 Now, the -- I know you discussed an *Alford* plea at  
19 some stage; but you, you need to be prepared if you want to  
20 plead guilty here today to say yes to that charge.

21 THE DEFENDANT: Your Honor, I mean, I'm not living in  
22 a society that's going to, you know, custom tailor things to  
23 what I believe. I can understand that the government or parts  
24 of the government would say that this constitutes a crime. I  
25 disagree, but I'm here because I'm guilty, and I have to -- I

1 can't agree with every law that I have to keep, but I have to  
2 keep the law. That's my point.

3 THE COURT: And you agree that a jury would find that  
4 under the facts of this case beyond a reasonable doubt, that  
5 you did intend to place others in fear of bodily harm or death?

6 THE DEFENDANT: Your Honor, I, I don't know that I  
7 can trust who a jury is and who they're going to be, if they're  
8 educated, if they're critical thinkers. I knew pretty much  
9 that you were going to be the judge, and I know that you've  
10 been a judge in other cases similar to this, and I'm confident  
11 that you have critical thinking abilities, and I'd rather it go  
12 in front of somebody that is a critical thinker rather than 12  
13 people that I have no idea who they are.

14 THE COURT: All right. Well, you know, I want to be  
15 satisfied that you've had time to think about this and have  
16 made a decision to plead guilty because you are guilty of the  
17 charge and that you understand the ramifications of that; so  
18 that's where I'm coming from.

19 THE DEFENDANT: I understand, Your Honor, what a  
20 guilty plea entails; and I have to plead guilty.

21 THE COURT: All right. Are you under -- are you  
22 using any medications which would affect your ability to  
23 understand my questions today or answer my questions?

24 THE DEFENDANT: No, Your Honor, I'm not.

25 THE COURT: All right. And has anybody made any

1 threats or promises that aren't in this agreement to get you to  
2 plead guilty here today?

3 THE DEFENDANT: No, Your Honor. I mean, it's --

4 THE COURT: There's no side deals?

5 THE DEFENDANT: No.

6 THE COURT: All right. Before I can accept your  
7 plea, I need to make sure that you understand what your rights  
8 are; and so we're going to go through those now; and your first  
9 right is to have a grand jury consider these charges against  
10 you and formally indict you, which is the formal method of  
11 bringing a case in federal court.

12 A grand jury is made up of two dozen members of our  
13 community. They'd have to hear evidence from a witness who is  
14 under oath. A majority would have to find that there was  
15 probable cause to believe that you committed this offense  
16 before you would be formally indicted.

17 Do you understand that process?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And did you discuss that right with  
20 Mr. Yamamoto to require the government to put the case in front  
21 of a grand jury?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: All right. And you've decided to waive  
24 that right and proceed by criminal information that has been  
25 filed here today?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right, I find that you've knowingly  
3 and voluntarily waived your right to the grand jury  
4 consideration.

5 You have a right to plead not guilty to the criminal  
6 information and require the government to prove its case  
7 against you beyond a reasonable doubt. Do you understand that?

8 THE DEFENDANT: Yes, I do, Your Honor.

9 THE COURT: And you're entitled to a jury trial if  
10 you wish it, where 12 members of the community would have to  
11 unanimously find you guilty beyond a reasonable doubt. Do you  
12 understand that?

13 THE DEFENDANT: I waive that, Your Honor. I waive  
14 that right, Your Honor.

15 THE COURT: All right. And you understand that if  
16 there was a trial, the government would have to put witnesses  
17 on the stand who would be under oath, subject to  
18 cross-examination by Mr. Yamamoto. You'd have a right to  
19 contest the evidence the government sought to admit against  
20 you. You'd have a right to testify in a trial if you wished  
21 and an absolute right not to testify if you did not wish to,  
22 and the jury or the Court couldn't infer your guilt because you  
23 did not testify.

24 You'd have a right to use the power of the Court to  
25 compel witnesses to attend and testify in your behalf, and

1 you'd have a right to counsel at every stage of the proceedings  
2 against you.

3 Do you understand those rights?

4 THE DEFENDANT: Yes, sir, Your Honor, I understand.

5 THE COURT: And you've discussed your right to plead  
6 not guilty with Mr. Yamamoto and have decided to waive that  
7 right and plead guilty here instead?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Do you understand that for  
10 a -- upon a conviction of Title 18, section 2261(a)(2)(B), the  
11 maximum penalty is up to five years of imprisonment, \$250,000  
12 fine, restitution of \$100 special assessment, three years of  
13 supervised release?

14 THE DEFENDANT: Yes, sir, I understand.

15 THE COURT: That's the maximum.

16 THE DEFENDANT: I understand.

17 THE COURT: And you understand that supervised  
18 release is a period of probation which begins after you have  
19 served any sentence and that if you're found to have violated  
20 the conditions of that supervised release, you could be ordered  
21 back to the penitentiary for the full length of the supervised  
22 release period?

23 Do you understand that?

24 THE DEFENDANT: Yes, sir, I understand.

25 THE COURT: All right. As you, I believe, know, I'm

1 not going to sentence you today. I'm going to order a  
2 pre-sentence report. I'm going to continue this case for, you  
3 know, three months or four months; and I'll know much more  
4 about you when we come back together; and that sentencing date,  
5 there'll be a pre-sentence report that will tell me about your  
6 history and much more than I know about you and also will  
7 include a guideline calculation that I consider in, in my  
8 sentence. That hasn't been calculated as of today. It won't  
9 be finally decided until your date of sentencing.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor, I understand.

12 THE COURT: All right. You've gone over the  
13 existence of the guidelines with Mr. Yamamoto and discussed  
14 that with him?

15 THE DEFENDANT: Yes, I have, Your Honor.

16 THE COURT: All right. Do you understand that I have  
17 no idea what sentence I'll determine is appropriate under the  
18 sentencing factors that I review and really won't until your  
19 day of sentencing? Do you understand that?

20 THE DEFENDANT: Yes, I understand, Your Honor.

21 THE COURT: All right. And knowing the uncertainty  
22 of what sentence may be imposed, you have nonetheless agreed to  
23 waive your right to appeal your conviction and also any  
24 sentence that I impose as long as it's a lawful sentence? Do  
25 you understand that?

1 THE DEFENDANT: I understand, Your Honor.

2 THE COURT: All right. We've discussed your immunity  
3 from further prosecution. The statement of facts as revised by  
4 you, have you had time to go over that and make the changes  
5 that you sought?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay.

8 THE DEFENDANT: Three times. The last changes that  
9 they made today I just went over about ten minutes ago, but  
10 I -- it's -- I'm, I'm okay with that.

11 THE COURT: All right. And is it accurate?

12 THE DEFENDANT: As a statement of facts? It's pretty  
13 much. As I said, Your Honor, I don't think that -- they're not  
14 going to let me make the charge, so --

15 THE COURT: Well, you've made comment about the  
16 commentary in some of the paragraphs; but do you disagree with  
17 the facts that are included in any of the paragraphs?

18 THE DEFENDANT: As from what I've looked through,  
19 Your Honor, and I've looked through the whole thing, I agree  
20 that it's factual that I put every post up that they stated;  
21 and that's really, you know, I would not accept this unless I  
22 said that; but that's really all I could say right now, Your  
23 Honor.

24 THE COURT: All right. And is it correct that the  
25 Revolution Muslim organization was started in December of 2007

1 by you as well as Mr. Morton?

2 THE DEFENDANT: The exact date, Your Honor, I'm not  
3 sure. I believe it was 2007. I don't know exactly what date  
4 it was, but it was indeed started by myself and Mr. Morton.

5 THE COURT: All right. And you were an administrator  
6 of the Web site and Internet platforms and made postings and  
7 interacted on that Web site?

8 THE DEFENDANT: That is correct, Your Honor.

9 THE COURT: All right.

10 THE DEFENDANT: Not every post but, I mean, I was, I  
11 was in charge of the Web site.

12 THE COURT: All right. And that, and that on or  
13 about February 28 of 2008, you posted a video titled "Knowledge  
14 is For Acting upon - The Manhattan Raid"? That's in paragraph  
15 4.

16 THE DEFENDANT: Paragraph 4. I just -- is this a  
17 yes-no --

18 THE COURT: That's a yes or --

19 THE DEFENDANT: That's a yes-no? I mean --

20 THE COURT: You can add anything you'd like to your  
21 answer.

22 THE DEFENDANT: Honestly, I have to take  
23 responsibility for everything. I don't remember if I was the  
24 one -- and I'm not using this to be a slickster. I will take  
25 responsibility for it; but I don't remember, if you're asking



1 me honestly, that I put it up there.

2 THE COURT: Whether you pushed the button or somebody  
3 else pushed the button?

4 THE DEFENDANT: But I, I will assume that I did do  
5 so.

6 THE COURT: All right. And you were aware of its  
7 posting.

8 THE DEFENDANT: Yeah, but this is not -- I've posted  
9 many things by many people, Your Honor, and this is not -- I  
10 did not watch that video, and I did post that video. I have no  
11 idea -- and I'm saying this under affirmation -- I have no idea  
12 that that's what that meant, but ignorance is not an excuse.

13 THE COURT: All right. Well, let's move on to  
14 paragraph 7, where it states that on November 6, 2009, you  
15 posted on the Web site a reference to the shootings by Nidal  
16 Hasan. Is that a correct statement, sir?

17 THE DEFENDANT: On No. 7. Yes. One second, just let  
18 me finish.

19 That is correct, Your Honor; I posted it.

20 THE COURT: All right. And then in -- if we move on  
21 to the heading "Threats Against Jewish Organizations," is it  
22 correct that in March of 2008, you posted on the Revolution  
23 Muslim Web site a video praising the Palestinian who died in  
24 the course of killing eight students and wounding eleven more  
25 at the school in Jerusalem? Paragraph 9.

1 THE DEFENDANT: Yes, Your Honor. Can I comment?

2 THE COURT: Yes, sir.

3 THE DEFENDANT: The word -- I'm just looking at it  
4 right now. I never post anything praising, because praising,  
5 as I understood it, is always illegal. You're not allowed to  
6 praise an act of terror, all right?

7 I put up a video talking about it, but I never said  
8 that this -- when I think of praising, Your Honor, I'm thinking  
9 of somebody saying he's wonderful, he did this and that, and he  
10 did a great job. That's praise in my understanding.

11 I did put up that video, and my emotions and my words  
12 are two different things. And I do have a little issue with --  
13 not a little issue -- I have an issue with it, that word  
14 "praising," if that could be modified, but I did put the post  
15 up.

16 THE COURT: All right. And you ended the video by  
17 stating what's in the single space in paragraph 9?

18 THE DEFENDANT: Expression "Mash-Allah,  
19 Subhan-Allah," yes, Your Honor.

20 THE COURT: All right. Let's move on to paragraph  
21 13. Is it correct that in, on or about January 20, you posted  
22 to the Revolution Muslim Web site a photo of the headquarters  
23 of the Chabad organization in Brooklyn, with accompanying links  
24 to a video and a map?

25 THE DEFENDANT: Just one second.

1           That is correct, Your Honor.

2           THE COURT: All right. And the language that  
3 follows --

4           THE DEFENDANT: "Do Not Let Orthodox" --

5           THE COURT: The message, yes, is that correct as  
6 well?

7           THE DEFENDANT: That is correct, Your Honor.

8           THE COURT: All right. Including the language, "Make  
9 EVERY attempt to reach these people and teach them the message  
10 of Islam or leave them a message from Islam"?

11          THE DEFENDANT: That is correct, Your Honor.

12          THE COURT: All right. And that shortly thereafter,  
13 and I'm not sure what that means, but I think it means the same  
14 day, because paragraph --

15          THE DEFENDANT: It does not, Your Honor, and that was  
16 amended. I would come to the same conclusion.

17          THE COURT: Okay.

18          THE DEFENDANT: I mean, I'd like to know -- they've  
19 since taken the wording out, I understand, from that; but had  
20 they kept that wording in, I would have asked, well, what is  
21 "shortly after"?

22          MR. KROMBERG: Judge, excuse me?

23          THE COURT: Yes, sir.

24          MR. KROMBERG: I think what Mr. Khattab is referring  
25 to, there was another sentence in a prior version about a

1 different post made shortly before that was removed, but the  
2 shortly thereafter one is an item that Mr. Yamamoto and I  
3 exchanged messages about, and we believe that it was  
4 immediately thereafter. According to the -- if you want me to  
5 speak in front of the microphone --

6 THE DEFENDANT: Oh, I'm sorry.

7 MR. KROMBERG: Thank you.

8 That there was a capture of the Web site that's on  
9 Internet Archive as of 5:37 a.m., and it -- and it has the,  
10 both *The Anarchist Cookbook* and the initial post, and the  
11 initial post was there, something about 1 a.m. So that maybe  
12 wasn't the same day, but it was within six hours, and it was  
13 the next post before the beginning of the next business day.

14 Agent McGuckin was the person who did that  
15 investigation and advised me. I sent that message to  
16 Mr. Yamamoto with a photo with a screen capture of  
17 Mr. McGuckin's computer when he went into the Internet Archive  
18 for the picture of the capture at 5:37 a.m. on January 22, when  
19 the initial post was made on January 21.

20 THE COURT: The 20th and 21st?

21 MR. KROMBERG: I'm sorry, 20th and 21st, thank you.

22 THE COURT: All right. I see that in the earlier  
23 version, Mr. Khattab, that shortly before the post, you had  
24 posted links to a speech by Faisal and a speech by Usama Bin  
25 Laden has been taken out of that paragraph; but based on what

1 you've just heard, do you still take issue with when *The*  
2 *Anarchist Cookbook* was first posted?

3 THE DEFENDANT: I put up *The Anarchist Cookbook*, but  
4 I'm just telling you honestly I don't remember putting it up,  
5 and I don't have these dates engrained in my mind --

6 THE COURT: Okay.

7 THE DEFENDANT: -- but what -- so it's just I don't  
8 know the time frame, and that's why -- and it's the second time  
9 that I saw this.

10 THE COURT: All right.

11 THE DEFENDANT: I could be wrong, and I'm not, I'm  
12 not trying to --

13 THE COURT: Well, we have, we have more of an  
14 explanation now for why they have used the words "shortly  
15 thereafter."

16 THE DEFENDANT: Okay.

17 THE COURT: And Mr. Yamamoto will have a chance to  
18 investigate that further before sentencing if it's incorrect.

19 THE DEFENDANT: Okay, Your Honor.

20 THE COURT: All right? And then in paragraph 15, it  
21 states that the New York Police Department put a surveillance  
22 vehicle in front of the Chabad headquarters in Brooklyn and  
23 that on January 21 of 2009, you posted on the same Web site a  
24 slide show, with photos of the New York Police Department  
25 protection, and then a blood-stained Hebrew prayer book from

1 the massacre of the students in 2008.

2 Is that correct?

3 THE DEFENDANT: Well, I did put that up, but the  
4 thing about children, they weren't children; they were adults.  
5 It's still -- not that that's any better, but I don't -- I'll  
6 accept what's written there.

7 MR. KROMBERG: I'm sorry, if I can just --

8 THE DEFENDANT: Sure.

9 MR. KROMBERG: I think that we might be  
10 miscommunicating. The massacre of the students and another  
11 slide of dead children.

12 THE DEFENDANT: Oh, okay. I'm sorry, I don't really  
13 have great vision. Please give me a second.

14 ". . . a blood-stained Hebrew prayer book from the  
15 massacre of Mercaz HaRav Yeshiva students," okay. I've got  
16 you. Oh, okay. I'm sorry, you're right.

17 I'm sorry, Your Honor.

18 THE COURT: So you posted that, that slide show?

19 THE DEFENDANT: Yes, I did, Your Honor.

20 THE COURT: All right.

21 THE DEFENDANT: Thank you.

22 THE COURT: And on -- if we go to paragraph 18, it  
23 states that on or about January 23 of 2009, you posted again on  
24 the Revolution Muslim Web site a video accusing the  
25 headquarters of Chabad of funding terrorism and urged viewers

1 to find the leaders of the organizations and hold them  
2 responsible.

3 THE DEFENDANT: Okay. That is correct, Your Honor.

4 THE COURT: All right. And on -- if we go to  
5 paragraph 26, it states that on May 21 of 2010, you posted a  
6 statement on the IslamicAwakening.com Web site about the, how  
7 to effectively scare the Jews and strike fear in the hearts of  
8 the Kufar. Is that correct?

9 THE DEFENDANT: That is correct, Your Honor. I can't  
10 affirm that it was on that date, but I --

11 THE COURT: You made that posting?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. How do you plead then,  
14 Mr. Khattab, to the criminal information, which charges that  
15 between January 8 of 2009 and the present date, in the Eastern  
16 District of Virginia and in New Jersey and elsewhere, that you  
17 unlawfully and with intent to place persons affiliated with  
18 Jewish organizations in other states, including the  
19 organization known as Chabad in Brooklyn, New York, in  
20 reasonable fear of death or serious bodily injury through using  
21 an interactive computer service?

22 THE DEFENDANT: I'm sorry, Your Honor, is there a  
23 number there on the criminal information? Can you just give me  
24 a second, please?

25 THE COURT: Oh, sure.

1 THE DEFENDANT: Thank you.

2 Your Honor, can I --

3 THE COURT: Take a moment. Take as much time as you  
4 need.

5 THE DEFENDANT: Thank you very much. Please excuse  
6 me, sir.

7 (Discussion between Mr. Yamamoto and the defendant  
8 off the record.)

9 THE DEFENDANT: Your Honor?

10 THE COURT: Yes.

11 THE DEFENDANT: I'm sorry, thank you.

12 What we've gone through, Your Honor, I -- as I said,  
13 I agree to what's been stated and what I've, what I've done. I  
14 have a problem with this last thing, with my intent. I  
15 understand what the government, part of the government is  
16 trying to say, but my intention is not and nor was it ever to  
17 kill anybody.

18 So it's very hard for me -- I mean, I'll do it  
19 because I don't want to go to a trial; I'll be honest with you,  
20 Your Honor. I'm not charged --

21 THE COURT: It's not that you intended. That's not  
22 what this statute says. The statute says that you intended to  
23 place persons in fear of bodily harm or death, not that you  
24 attempted to kill anyone, not that you conspired to kill  
25 anyone, not that you assisted in the killing of anyone.



1 THE DEFENDANT: But --

2 THE COURT: We'd be in a very different place,  
3 wouldn't we, if anybody had actually attacked any of these  
4 Jewish centers, wouldn't we?

5 THE DEFENDANT: Absolutely.

6 THE COURT: But that hasn't happened. It never  
7 happened.

8 The issue is did you put people in reasonable -- let  
9 me make sure I -- reasonable fear of death or serious bodily  
10 injury through your postings on the Revolution Muslim Web site  
11 in the use of videos and photos and slides and messages, in  
12 particular to the organization known as Chabad in Brooklyn, New  
13 York.

14 THE DEFENDANT: Honestly, Your Honor, I -- as I  
15 stated before, I accept that I could have been in error, that  
16 that's how these, these things were taken. My intention was  
17 never to cause anybody bodily harm, nor would I ever say  
18 something in front of a camera or on my Web site to insinuate  
19 that.

20 So I can see -- and that's what I'm affirming  
21 today -- that out of my stupidity, which is not an excuse, but  
22 I never intended to physically hurt anybody, and if I -- if I  
23 did, I certainly would not do it in a manner like that.

24 THE COURT: Well, okay. Then this is the issue:  
25 Either you have to say: Yes, I intended to put people in fear

1 of serious bodily harm or death; or you have to say that I, in  
2 looking at these facts, believe the government could prove  
3 beyond a reasonable doubt that, in fact, that was my intent;  
4 and if you're not prepared to do one of those, then --

5 THE DEFENDANT: Well, Your Honor, I believe that they  
6 could prove that, but I -- that's my point. My allocution is  
7 not so great, but that is -- I think that they could prove it,  
8 but that is not my intention, Your Honor.

9 THE COURT: All right. Mr. Yamamoto, have you gone  
10 over the facts of the case with Mr. Khattab?

11 MR. YAMAMOTO: Yes, Your Honor.

12 THE COURT: And gotten discovery from the government?

13 MR. YAMAMOTO: Yes, Your Honor.

14 THE COURT: How long has this been kind of brewing?

15 MR. YAMAMOTO: Several months, Your Honor.

16 THE COURT: All right. And you've had many  
17 conversations during that time with the government about the  
18 nature of the case and the -- and their information that they  
19 possessed?

20 MR. YAMAMOTO: Correct, Your Honor.

21 THE COURT: All right. And you've had discussions  
22 with Mr. Khattab and especially surrounding the accuracy of the  
23 statement of facts?

24 MR. YAMAMOTO: Correct, Your Honor.

25 THE COURT: After our discussions today in court and

1 previously, do you believe that Mr. Khattab's plea is knowingly  
2 and voluntarily made?

3 MR. YAMAMOTO: Yes, Your Honor.

4 THE COURT: And that there's a basis in fact for it?

5 MR. YAMAMOTO: Yes, Your Honor.

6 THE COURT: All right. I'll -- based on the  
7 agreement and the statement of facts and our conversation, I'll  
8 find Mr. Khattab guilty of the criminal information. I find  
9 without question that there's evidence to support each of the  
10 elements of the offense. I'll continue this matter and order a  
11 pre-sentence report.

12 How is February 7? That's about a hundred days. Is  
13 that -- I don't know if this case requires any more time or  
14 not. Mr. Kromberg?

15 MR. KROMBERG: I don't think it will require any  
16 unusual amount of time, and that date is as good as any.

17 MR. YAMAMOTO: That's fine, Your Honor.

18 THE COURT: All right. Mr. Khattab, is that date  
19 good, sir?

20 THE DEFENDANT: As you see, Your Honor.

21 THE COURT: All right, then we'll continue this  
22 matter until February 7, at 9 a.m., for sentencing. As I said,  
23 I'll order a pre-sentence report.

24 I've received a Pretrial Services report indicating  
25 that Mr. Khattab lives in Atlantic City and is employed, and

1 the Pretrial Services recommended certain conditions for his  
2 bond. Is there any objection to --

3 MR. KROMBERG: No objection to being released on  
4 those conditions, Judge. We'd note that I think there may be  
5 more than -- there may be an Israeli passport as well as an  
6 American passport.

7 THE DEFENDANT: I no longer have it; I'm sorry.

8 THE COURT: Do you have a passport any longer?

9 THE DEFENDANT: I had an Israeli passport. I don't  
10 have it any longer. I mean, I assume I still have dual  
11 citizenship, but I don't have that passport, and I gave it --

12 THE COURT: You don't have it?

13 THE DEFENDANT: I gave it to somebody who was with  
14 our organization when I left with all my papers and my son's  
15 papers. When I came back to get it, he said that he misplaced  
16 the whole package. My son has since fixed all his papers  
17 without it, and I certainly don't have a use for it. I don't  
18 use it; and I won't use it; and I'm not getting out with it,  
19 Your Honor.

20 THE COURT: All right. And I understand you're on a  
21 watch list anyway, so --

22 THE DEFENDANT: Exactly.

23 THE COURT: All right. I'm going to release you on  
24 \$25,000 personal recognizance bond, which means it doesn't cost  
25 you any money unless you fail to appear at subsequent hearings,

1 including the February 7 hearing.

2 THE DEFENDANT: Okay, Your Honor.

3 THE COURT: I'll order that you be supervised by  
4 Pretrial Services, and they'll transfer that supervision up to  
5 New Jersey, that you not obtain any new travel documents, that  
6 your travel be restricted to the District of New Jersey and the  
7 Washington Metropolitan area for travel purposes.

8 MR. YAMAMOTO: Your Honor?

9 THE COURT: Yes, sir.

10 MR. YAMAMOTO: Could you add New York to that,  
11 please? His family is in New York.

12 THE DEFENDANT: My son and my grandson live in New  
13 York City, if it's possible.

14 THE COURT: All right. And New York, yes.

15 THE DEFENDANT: And very seldom do I go up anyway.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: Very seldom do I go up, but if the  
18 need arises.

19 THE COURT: All right. No, I think that's very  
20 reasonable. And New York.

21 Refrain from posting any material on the Internet  
22 which has any political overtones. Do you use the Internet for  
23 business purposes?

24 THE DEFENDANT: Your Honor, in general, no. I mean,  
25 I use Facebook now. I use YouTube. Not really. I've not

1 posted anything. I do use Facebook, and I don't -- he would  
2 tell you better than I; I really have not put anything -- you  
3 tell me this: Have I behaved myself in the past?

4 I really -- but the only -- I'm a married man, and my  
5 wife is in Morocco, and the only way I can communicate with my  
6 wife and my kids is that, and I live in a room, and it's like  
7 my only outlet to civilization, and I live in Atlantic City.

8 THE COURT: Yeah.

9 THE DEFENDANT: So everything has come -- and it's  
10 open. Anybody could see it. I'm not, I'm not --

11 THE COURT: All right, refrain from posting any  
12 political -- postings of any political nature. Is that fair to  
13 say?

14 THE DEFENDANT: Okay. Your Honor, and by  
15 "political," I'm not trying to -- I really want to make it  
16 clear. What --

17 THE COURT: Well, I guess that's not -- it isn't very  
18 exact; you're right. Anything that would incite others, offend  
19 others. There's no Web site, Revolutionary Muslim Web site any  
20 longer; that's gone.

21 THE DEFENDANT: No.

22 THE COURT: And I don't know whether you have,  
23 operate any other Web sites?

24 THE DEFENDANT: No, not since that time that I know  
25 of, Your Honor. Is what I'm posting now questionable, or

1       should I --

2               SA McGUICKIN: I haven't seen anything unreasonable in  
3 recent history.

4               THE COURT: All right.

5               THE DEFENDANT: So I can continue as I am status quo.  
6 I won't put any --

7               THE COURT: All right. And check with Mr. Yamamoto  
8 if you think that you want to post something that may get you  
9 in trouble.

10              THE DEFENDANT: No, no. Your Honor --

11              THE COURT: It's a really important time for you.

12              THE DEFENDANT: I understand, Your Honor.

13              THE COURT: And you're on conditions of release, and  
14 they can be revoked at any time if there's cause for doing so,  
15 and you don't want to make a mistake unwittingly that causes  
16 your bond to be revoked. So when in doubt, check with  
17 Mr. Yamamoto. If he needs to check with Mr. Kromberg, he can  
18 do so; and that's not an unreasonable request, I don't think,  
19 at this time.

20              THE DEFENDANT: That's fine. Thank you, Your Honor.

21              THE COURT: Otherwise, status quo with your use of,  
22 of the Internet.

23              There's a condition, submitting to and paying for  
24 computer monitoring at the direction of Pretrial Services.

25              MR. YAMAMOTO: Your Honor, I think the government's

1     been monitoring him, so I don't know --

2                 THE COURT:   Yeah, I don't know that -- I'm not going  
3     to order that condition.  If it turns out that it's, Pretrial  
4     Services for some reason asks for it, we'll discuss that in the  
5     future.

6                 MR. YAMAMOTO:  Your Honor, with respect to the  
7     passport, may he turn the passport over to me to hold?  There's  
8     been trouble in the past about passports getting lost.

9                 THE COURT:  Disappearing, yeah.  Getting over to the  
10    State Department and -- yes, you can surrender your -- you have  
11    an American --

12                THE DEFENDANT:  I have a valid United States  
13    passport, Your Honor.

14                THE COURT:  -- passport, all right.

15                Then surrender that passport to Mr. Yamamoto for, for  
16    safekeeping.

17                THE DEFENDANT:  Yes, Your Honor.

18                THE COURT:  And you can mail it to him when you  
19    get -- I don't know if you have it with you.

20                THE DEFENDANT:  I have it with me.

21                THE COURT:  You have it, all right.  So then he can  
22    take possession of that now.

23                All right, anything else in this matter today?

24                MR. KROMBERG:  No, Your Honor.

25                THE COURT:  All right.  As I said, it's an important



1 time for you. When you have any questions about what's going  
2 on, there's the man to talk to.

3 THE DEFENDANT: Thank you very much, Your Honor. I  
4 appreciate it.

5 THE COURT: All right, then if you'll take -- we're  
6 going to put the bond conditions together. If you'll sign  
7 those and then take Mr. Khattab to the Probation Office?

8 MR. YAMAMOTO: Yes, Your Honor.

9 THE COURT: Have a seat. Wait for a minute.

10 THE DEFENDANT: Thank you, Your Honor.

11 THE COURT: All right, look over those release  
12 conditions, and sign them, and if there's any questions, I'll  
13 be in chambers.

14 MR. YAMAMOTO: Thank you, Your Honor.

15 MR. KROMBERG: Thank you, Judge.

16 THE COURT: All right, we're in recess. Thank  
17 you-all.

18 (Which were all the proceedings  
19 had at this time.)

20

21 CERTIFICATE OF THE REPORTER

22 I certify that the foregoing is a correct transcript of  
23 the record of proceedings in the above-entitled matter.

24

25

/s/  
Anneliese J. Thomson